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Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ISRAEL WEINSTOCK,

Petitioner,

v.

ESTHER WEINSTOCK,

Respondent.

On Petition for Writ of Certiorari to the Appellate Division, Second Department, State of New York

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. The Appellate Division, Second Department, imposed sanctions on petitioner for seeking modification of that portion of a prior decision holding that a separation agreement was the product of duress and overreaching to the extent of clearing the imputation of wrongdoing only, based on newly discovered evidence of perjury on the part of the respondent. The Appellate Division held that the appeal was frivolous in that it failed to seek some real form of relief and imposed the maximum sanction permitted by law based on the supposed waste of judicial resources. In doing so, the Court violated the right to petition under the First Amendment.

2. The New York court imposed the maximum sanction permitted under state law in an amount grossly disproportionate to the alleged offense, in violation of due process under the Fifth and Fourteenth Amendments.

3. The imposition of the maximum sanction, without proportion to the offense charged, was an excessive fine in violation of the Eighth Amendment.

4. The New York court failed to comply with the portion of the New York sanctions rule that requires a statement of the reasons why the sanction imposed was appropriate, and failed to comply with the minimum standards of due process required under the Fifth and Fourteenth Amendments.

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The Order of the New York Supreme Court, Queens County, dated March 26, 1997, is reproduced in Appendix B.

JURISDICTION

(1) The date of the Order of the Court of Appeals denying leave to appeal is December 22, 1998. (Appendix C).

(2) Jurisdiction is conferred under 28 U.S.C. § 1257(a) on the grounds that the order sought to be reviewed is repugnant to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND COURT RULES

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall any person be compelled to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments imposed.

Amendment XIV, Section I:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Part 130-1.1 of the New York Rules of Court (22 N.Y.C.R.R. 130.1.1):

[*Reproduced in Appendix D*]

Part 130-1.2 of the New York Rules of Court (22 N.Y.C.R.R. 130.1.2):

[*Reproduced in Appendix D*]

STATEMENT OF THE CASE

Petitioner is an attorney and businessman and was divorced from the respondent in 1995 after ten years of costly matrimonial litigation, most of which was caused by the fraudulent and grossly inflated claims advanced by respondent and her former attorney, Stanley Alter, concerning the circumstances surrounding the execution of the separation agreement between the parties. In 1990 the Appellate Division, Second Department set aside a separation agreement between the parties on the grounds that the agreement was the product of coercion and overreaching by the petitioner, and made new findings of facts that differed very greatly from those made by the trial court that actually tried the case. *Weinstock v. Weinstock*, 167 A.D.2d 397, 561 N.Y.S.2d 808 (2d Dept. 1990). Respondent, coached by her attorney, had asserted under oath that she was impaired by drug and alcohol abuse, had diminished capacity (even though she held a responsible and well-compensated job), that the petitioner denied respondent access to his financial records, and that she had no knowledge whatsoever of the petitioner's assets when she signed the separation agreement.

Four more years of litigation ensued, culminating in a month-long equitable distribution trial in 1994. The evidence at trial established that the claims made in the 1990 litigation to set aside the separation agreement were fraudulent, and that in many cases these claims had been entirely fabricated by the respondent and her attorney. Respondent denied any history of alcohol or drug abuse, admitted that she had worked as the bookkeeper in petitioner's office at the time that she had previously claimed to have been denied access to petitioner's financial records, and admitted that she had received large sums of money from petitioner that she had previously denied receiving. Petitioner also proved that the psychiatrist who testified to the respondent's supposed diminished capacity had been impaired by Alzheimer's disease at the time of the trial, that the respondent was not in fact under any psychiatric impairment, that the respondent had been represented by an attorney of her choice at the time that she executed the separation agreement, and that there was no coercion or duress.[1] These and other misrepresentations made by respondent and her counsel, with the evidence demonstrating their falsity, are set fort in the "Summary of Contradictions" in the Appendix. The trial court found that respondent had lied, severely criticized her attorneys and expert witnesses, found that the marital estate was less than one-fifth of the amount claimed by the respondent, and made a distributive award in an amount far less than that sought by the respondent. Respondent fired Mr. Alter shortly after the trial, apparently in dissatisfaction with the outcome and with his bills, which the trial court found to be grossly inflated. Respondent appealed the divorce

1. The original trial court in 1989 did not make these findings. These findings were made on appeal by the Appellate Division in 1990. Intermediate appellate courts in New York have the power to make new findings of fact.

judgment but later abandoned the appeal. The divorce has been finally determined and no further relief is sought with respect to the divorce itself.

The 1990 Appellate Division decision remains a matter of public record, even though the allegations of coercion and overreaching were disproven at the trial in 1994.[2] Plaintiff is an attorney with a substantial litigation practice. Since 1990 petitioner has been subjected to numerous *ad hominem* attacks by unscrupulous adversaries based on the 1990 Appellate Division decision. The continued existence of this decision as a matter of public record since 1990 has been an impediment to the petitioner's professional career and a stain on his name and character. Petitioner's adversaries have ready access to the damaging and untrue material set forth in the 1990 decision, especially with the widespread use of search technology such as Lexis and Westlaw.

After the conclusion of the matrimonial litigation, plaintiff made a motion under Section 5015(a)(3) of the New York Civil Practice Law and Rules to vacate that portion of the 1990 Appellate Division decision which found that the petitioner had engaged in coercion and overreaching on the grounds that these findings had been procured by fraud. Petitioner did not seek to overturn any of the financial aspects of the 1990 decision. The petitioner's motion papers stated explicitly that the purpose of the motion was to clear the imputation made against the petitioner's good name and reputation and that no relief was sought affecting the respondent. Respondent did not contest the petitioner's showing that the proceedings throughout the litigation had

2. New York Appellate Division decisions are published in the official reports and in the unofficial New York Supplement as a matter of course.

been tainted by her fraud and perjury and the misconduct of her former attorney. The trial court denied the motion, holding, among other things, that it lacked the authority to review the new findings of fact made by the Appellate Division in its 1990 decision.[3] Petitioner appealed to the Appellate Division, which found as follows:

> We find that the plaintiff's assertion that his intent was to clear his name in no way diminishes the fact that the appeal was meritless. We believe that merit must be judged with reference to whether a particular course of litigation is or is not designed to obtain some real form of relief as a remedy for some cognizable wrong. The appeal taken by the plaintiff was completely without merit under this standard, and, in the absence of any other concrete motivation, this appeal can only have been intended to harass the defendant . . . We therefore award the maximum authorized amount as a sanction for this conduct (*see* 22 NYCRR 130-1.1), calling to mind that frivolous litigation causes a substantial waste of judicial resources to the detriment of those litigants who come to the court with real grievances.

The maximum amount authorized by the New York sanctions rule is $10,000.

Petitioner paid the sanction and filed a motion for permission to appeal to the New York Court of Appeals. *See* the Appendix. The issues raised to the Court of Appeals were

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3. This was *not*, incidentally, an accurate statement of New York law.

(1) that the imposition of sanctions was unjustifiable given the uncontroverted factual showing that the 1990 decision had been procured by fraud and misconduct; (2) that the lack of standards and arbitrary imposition of the maximum amount of sanctions denied petitioner due process (inaccurately characterized in the motion as equal protection); and (3) that the amount of the sanction was an excessive penalty for the offense alleged. There were no independent grounds for the motion for permission to appeal on state law grounds, such as would preclude Supreme Court review.[4] That motion was denied without comment on December 22, 1998. *See* the Appendix.

REASONS FOR GRANTING THE WRIT

I.

THERE ARE SPECIAL AND IMPORTANT REASONS TO GRANT THE WRIT

A good name is rather to be chosen than great riches.

Proverbs 22:1

The state court imposed the maximum sanction on the petitioner for presenting an admittedly meritorious application that sought relief in the form of clearing one's good name rather than monetary damages. The New York sanctions rule permits the imposition of sanctions even on a meritorious

4. This Court has held, specifically with respect to New York appeals, that a "plain statement" of independent state grounds is required to oust Supreme Court jurisdiction in a case involving Federal constitutional issues. *New York v. Class*, 475 U.S. 106 (1986).

application and, unlike Federal Rule 11, does not require that the sanction be proportional to the offense alleged. The state court held that the 'name-clearing' relief sought by the petitioner merited the imposition of the maximum amount of sanctions essentially because the relief sought was non-monetary. In doing so, the state court violated petitioners' right of petition under the First Amendment and his right to due process under the Fifth and Fourteenth Amendments.

The issues raised here are of considerable public importance because the state court has held that sanctions may be imposed for seeking relief that affects matters of principle, an issue that is likely to recur, especially in civil rights or public interest litigation. The issues here affect vital constitutional rights but are likely to otherwise escape constitutional review because sanctions are usually imposed in lower courts and rarely reach the higher appellate courts. Moreover, the relief sought by the petitioner was *not* merely hypothetical or symbolic. Petitioner sought the relief requested of the state court because the decision sought to be modified, which was admitted to have been the product of perjury and misconduct, has adversely affected his professional practice. The heightened scrutiny given to the lax treatment of perjury, due to recent political events, warrants issuance of a writ to determine whether the petitioner had a constitutional right to seek the relief sought in the state court.

II.

THE STATE COURT VIOLATED PETITIONER'S FIRST AMENDMENT RIGHT OF PETITION

The Appellate Division decision at issue did not address the merits of the petitioner's motion to vacate the offending portions of its prior 1990 decision. Instead, the Appellate Division held that the motion to clear the petitioner's name was sanctionable not because the application was without merit but because the 'name-clearing' relief was not a "real form of relief as a remedy for some cognizable wrong" and was consequently sanctionable *per se* for consuming the court's time with a claim seeking merely 'name-clearing' relief.

The New York sanctions rule permits the imposition of sanctions *either* for conduct that is without merit *or* for actions taken for delay or harassment. The New York courts have held that sanctions may be imposed even on a meritorious application if the Court finds that the application was made for the purposes of delay or harassment. *Gordon v. Marrone*, 202 A.D.2d 104, 616 N.Y.S.2d 98 (2d Dept. 1994). The court in *Gordon* held that the imposition of sanctions on a meritorious application does not infringe on the First Amendment right of petition if the Court finds that the application was made for the purposes of harassment. The state court did not find that the application was without merit based on the facts and law, but rather that it was without merit because it sought 'name-clearing,' *i.e.*, non-monetary, relief. There is no bona fide issue that the application to the state court was colorable under the facts and law. The factual basis of the application was not disputed by the respondent, and the state court had the authority to grant the relief sought.

Oppenheimer v. Westcott, 47 N.Y.2d 595, 419 N.Y.S.2d 908, 393 N.E.2d 982 (1979); *McMahan v. City of New York*, 105 A.D.2d 101, 483 N.Y.S.2d 228 (1st Dept. 1984); *National Management Corp. v. Shelton Towers Associates*, 111 A.D.2d 154, 488 N.Y.S.2d 786 (2d Dept. 1985).

Petitioner's challenge to the constitutionality of the New York sanctions rule is based on its application to him. Petitioner's appeal to the Appellate Division stated expressly that petitioner was not seeking any relief that affected the respondent and that the purpose of the appeal was to clear his name, a clear distinction from *Gordon v. Marrone*, where the action taken was intended to harass the opposing party. The state court intentionally tried to bring this action within its rule in *Gordon v. Marrone, supra*, by holding that "in the absence of any other concrete motivation, this appeal can only have been intended to harass the [respondent]."[5] This holding was clearly pretextual. The real, and stated, purpose of the state court was to impose sanctions on the 'name-clearing' action not because of any injury to the respondent but because the 'name-clearing' appeal was a "waste of judicial resources to the detriment of those litigants who come to the Court with real grievances." In the absence of any intention to harass the respondent, the imposition of sanctions on the petitioner violated petitioner's First Amendment right of petition.

The courts have long recognized a right to bring actions seeking "symbolic" as opposed to monetary relief, especially

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5. Lest there be any issue as to whether the state court intended to bring the action within the rule of *Gordon v. Marrone*, the same court cited *Gordon v. Marrone* in a separate interlocutory appeal in the same action. *Weinstock v. Weinstock*, __ A.D.2d __, 1998 N.Y. Slip Op. 4704, 672 N.Y.S.2d 772 (1998).

in cases involving matters of constitutional right. *Carey v. Piphus*, 453 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978). In *Amato v. Saratoga Springs*, 1999 U.S. App. LEXIS 4123 (1999), the Second Circuit held specifically that a plaintiff had the right to bring an action seeking 'symbolic' damages of one dollar under 42 U.S.C. § 1983, notwithstanding any considerations of the cost to the court system of entertaining a case for 'symbolic' relief, and notwithstanding the arguments of the dissent (remarkably similar to those at issue here) that entertaining the action would be an undue burden on the court system. In the present case, petitioner is entitled to more than merely symbolic relief. The motion to the Court of Appeals sets forth the actual injury caused to the petitioner as the result of the denial of the relief, through the use of the 1990 decision as a basis for personal attacks against the petitioner as a practicing attorney.

This Court has the exclusive right of review in matters where the law as set forth by state courts of last resort is contrary to federal constitutional law under the *Rooker-Feldman* doctrine. *Rooker v. Fidelity Trust Co.*, 44 S. Ct. 149, 263 U.S. 413, 68 L. Ed. 2d 362 (1923); *Dist. Of Columbia Court of Appeals v. Feldman*, 103 S. Ct. 1303, 460 U.S. 462, 75 L. Ed. 2d 206. The issue was preserved for review in the motion for leave to appeal to the New York Court of Appeals, which argued that the imposition of sanctions was "unsupportable and unjustified" in light of the factual and legal merit of the application. Although the First Amendment was not cited by name, the constitutional implications of the application of the rule in *Gordon v. Marrone* was clearly before the Court of Appeals in light of the holding of the Appellate Division and of the prior decision of the Appellate Division citing *Gordon v. Marrone* by name, especially since the Court of Appeals had no jurisdiction to entertain an appeal

from the factual findings of the Appellate Division. There is no bona fide issue that the state court held as it did, due to its understanding of federal constitutional law pertaining to the right to petition as set forth in *Gordon v. Marrone*. This Court has held that, in the absence of any stated independent state law grounds, it will assume that the state court made its decision based on its understanding of federal constitutional law. *Michigan v. Long*, 463 U.S. 1032, 1043 (1983).[6] The issues here are ripe for determination, and the Court should grant the writ.

III.

THE STATE COURT'S ACTION VIOLATED DUE PROCESS

The state court's imposition of the maximum sanction permitted under state law, in an amount grossly disproportionate to the alleged offense, violates Petitioner's due process rights under the Fifth and Fourteenth Amendments (inaccurately characterized in Petitioner's Motion for Leave to Appeal to the New York Court of Appeals as equal protection rights).

It is well established that the due process clause of the Fifth and Fourteenth Amendments places a limitation upon the power of the States to prescribe penalties for violations of their laws, and that a penalty so severe and oppressive as to be wholly disproportionate to the offense and obviously

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6. In New York cases involving denials of leave to appeal, this Court has held that it will make its own determination as to the preservation of constitutional issues. *Ellis v. Dixon*, 349 U.S. 458, 75 S. Ct. 850, 99 L. Ed. 2d 1231 (1955).

unreasonable transcends such limitation. *St. Louis, Iron Mountain & Southern Railway Co. v. Williams*, 251 U.S. 63, 67. The analogy to state action in the form of a sanctions statute is apt. (See Petitioner's Notice of Motion for Leave to Appeal to the New York Court of Appeals, and Affidavit in Support thereof, § 2(1)).

Petitioner argued to the New York Court of Appeals that the imposition of sanctions in the amount of $10,000 was unsupportable and unjustified in light of the factual and legal merit of Petitioner's motion to the trial court to vacate its prior order on the basis of fraud on the courts under New York CPLR 5015(a)(3), a motion that no state court had found meritless. The Appellate Division's conclusion that Petitioner's conduct in appealing the denial of his motion was "completely without merit" because the appeal was not designed to obtain "some real form of relief as a remedy for some cognizable wrong" and thus could only have been intended to "harass the defendant by needlessly forcing her to incur attorneys' fees" ignores Petitioner's assertion, discounted but not disbelieved by the state court, that he sought only to clear his name (a legitimate interest protected in our law, *inter alia*, by the tort of defamation). This conclusion further ignores the fact that Petitioner made this desire clear to the Appellate Division and to Defendant at the outset (as set forth in the affidavit of Michael Dikman, Esq. dated June 3, 1996 filed in support of Petitioner's CPLR 5015(a)(3) application, p. 15 of the Record on Appeal), thus obviating any requirement that Defendant defend the motion or the appeal of its denial. Petitioner submits that under these circumstances not only was the court's imposition of sanctions unjustified *per se*, but the imposition of the maximum sanction allowable was clearly disproportionate to the "offense" and obviously unreasonable such as to be

unconscionable under the test enunciated by this court in *St. Louis, Iron Mountain & Southern Railway Co. v. Williams.* The sanctions statute has both punitive and deterrent objectives. It cannot meet either if the magnitude of the sanction is not related to the magnitude of the wrong. *Browning Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301.

Petitioner respectfully submits that application of the statute is unconstitutional where the sanctioning court fails to comply with the legislative mandate to enunciate the reasons why the sanctions imposed are appropriate (See Petitioner's Motion for Leave to Appeal to the New York Court of Appeals § 3(i); 22 NYCRR 130-1.2). This failure denies appellant due process of law in application of the statute in depriving him of property through state action which must be presumed capricious and arbitrary given the court's failure to provide the rationale for its action as legislatively mandated. (See Petitioner's Affidavit in Support of his Motion for Leave to Appeal to the New York Court of Appeals, § 51.)

The Court's failure to comply with that portion of the New York sanctions rule that requires of the sanctioning court a statement of the reasons why the sanctions imposed were appropriate (22 NYCRR 130-1.2) further denies appellant due process in application of the statute inasmuch as it strikes at the heart of the reviewing court's ability to properly review the sanctioning court's exercise of discretion under the applicable standard of "abuse of discretion" (22 NYCRR 130-1.1[a]; *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384). It must be inferred that the legislature's inclusion of the requirement of a statement of reasons was intended to

mandate that the amount of sanctions in fact be "appropriate". (This requirement may be read into 22 NYCRR 130-1.1[a][2], although the point is not free from doubt. By analogy, this requirement is spelled out in Rule 11 of the Federal Rules of Civil Procedure). Without the required statement the appellate task of ensuring that a litigant's constitutional right to be free from arbitrary, whimsical or capricious state action, a right traced to the Magna Carta and the British Bill of Rights of 1692, is made difficult, if not impossible.

The Second Department's decision in *First Nationwide Bank, Inc. v. Felberman*, 239 A.D.2d 385, 657 N.Y.S.2d 431 (2d Dept. 1997) further illustrates why the court's failure to enunciate reasons supporting the amount of sanctions it imposes results in denial of Petitioner's constitutional rights. In that case a mortgagor and her attorney were sanctioned $500 and $2500 respectively for their conduct in prosecuting an appeal found to be frivolous under the New York statute because "completely without merit in law or fact" (22 NYCRR 130-1.1[c][1]) and "undertaken primarily to delay or prolong the resolution of the litigation" (22 NYCRR 130-1.1[c][2]). The Court there failed to enunciate the reasons why it found these amounts appropriate, just as it had in the case it cites, *SRF Builders Capital Corp. v. Ventura*, 229 A.D.2d 431, 644 N.Y.S.2d. 813 (2d Dept. 1996), and just as it has done here. (In *SRF Builders Capital Corp. v. Ventura* the Appellate Division sanctioned a mortgagor and his attorney $2500 each for their conduct in prosecuting an appeal found to be frivolous under the New York statute in circumstances very similar to those in the *First Nationwide Bank, Inc. v. Felberman* case). Petitioner's motion for leave to appeal to the Court of Appeals also describes a series of frivolous actions carried out by a known frivolous litigant, David Fischer, which the same Appellate Division punished

with only a token sanction. The disparate treatment imposed on the petitioner, without explanation or rationale, does nothing to further the punitive and deterrent objectives of the statute. This apparent disparity of application of the statute is extensively argued in Petitioner's Affidavit in Support of his Motion for Leave to Appeal to the New York Court of Appeals at §§ 38, 39 and 51.

IV.

THE SANCTION IMPOSED WAS AN EXCESSIVE FINE IN VIOLATION OF THE EIGHTH AMENDMENT

The state court imposed the maximum sanction permitted by New York law on the petitioner, not because the respondent or any other person was injured by petitioner's conduct but simply because the state court felt that the 'name-clearing' relief sought by petitioner was essentially symbolic relief.[7] In doing so, the state court violated the Eighth Amendment prohibition on excessive fines.

There is a dearth of cases on the effect of the Eighth Amendment on court-imposed sanctions, most likely because federal Rule 11 requires that the sanction be proportional to the injury. The New York statute, by contrast, has no such limitation. This invites arbitrary treatment such as that suffered by the petitioner. In the present case, the Court imposed the maximum sanction without regard to the fact that there was no cognizable harm to the respondent. This

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7. The issue of the excessiveness of the fine was raised in the Court of Appeals and was preserved for this Court's review. *United States v. One Parcel of Real Property Described as Lot 41*, 128 F.3d 1386 (10th Cir. 1997).

action was a grossly excessive fine in relation to the state's legitimate interests and violated the Eighth Amendment prohibition against excessive fines.

In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), this Court held that the Eighth Amendment prohibition against excessive fines was not limited to criminal penalties but also extended to civil actions, in that case punitive damages. This Court held in *BMW* that punitive damages that are "grossly excessive in relation to the State's legitimate interests in punishing unlawful conduct" violate the Eighth Amendment prohibition against excessive fines. This Court has also held that the Eighth Amendment prohibition against excessive fines applies to civil forfeitures. *Austin v. United States*, 509 U.S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993); *United States v. Bajakajian*, 84 F.3d 334 (9th Cir. 1996). This reasoning certainly applies with greater force to the imposition of sanctions by a Court, which is self-evidently a fine imposed by the state.

The sanction at issue here was grossly disproportionate to the supposed offense and was *intended* to be so by the state court. The sanction was intended to be purely punitive. No attempt was even made to justify the sanction in terms of the harm allegedly caused to the respondent; in fact, a separate sanction of $3,000 was imposed supposedly to compensate the respondent for the attorneys' fees incurred by her on the appeal (which were in fact far less than $3,000). The sole purpose of the $10,000 sanction, *as expressly stated by the state court*, was to punish the petitioner for bringing an appeal seeking 'name-clearing' relief simply because the state court felt that the 'name-clearing' relief was a form of 'symbolic' relief, and because the state court *chose* not to entertain that

application. The stated purpose of the state court was to impose the maximum sanction, not with regard to the gravity of the supposed offense but simply to punish the petitioner for bringing an application which had legal and factual merit but which the state court did not want to entertain.

The amount of the sanction by itself is not the issue, although a $10,000 sanction merely because the court chose not to entertain the appeal is in itself unduly harsh. The issue of constitutional importance is the imposition of the maximum sanction without any proportion to the alleged offense. It is merely fortuitous that the maximum sanction was $10,000; presumably the state court would have imposed a greater sanction if it had the power to do so. This Court should grant the writ to determine whether the state court's action violated the Eighth Amendment prohibition against excessive fines.

CONCLUSION

For the reasons set forth above, the Court should grant the writ of certiorari, together with such further and different relief as the Court may deem just and proper.

Respectfully submitted,

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